

Senate Study Bill 3019

SENATE/HOUSE FILE _____
BY (PROPOSED ATTORNEY GENERAL
BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to offenses against identity, requiring notice of
2 a breach of security of computer data containing personal
3 information, and providing a procedure to secure credit
4 information, and providing a penalty.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 5469DP 81
7 eg/gg/14

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1 1 DIVISION I
1 2 Section 1. Section 702.1A, unnumbered paragraph 1, Code
1 3 2005, is amended to read as follows:
1 4 For purposes of section 714.1, subsection 8, section
1 5 714.16C, and section 716.6B:
1 6 Sec. 2 NEW SECTION. 714.16C NOTICE OF SECURITY BREACH
1 7 REQUIRED.
1 8 1. As used in this section, unless the context otherwise
1 9 requires:
1 10 a. "Customer" means an individual who is a resident of
1 11 this state who provides personal information to a person for
1 12 the purpose of purchasing, leasing, or obtaining goods or
1 13 services.
1 14 b. "Individual" means a natural person.
1 15 c. "Person" means an individual, sole proprietorship,
1 16 partnership, business corporation, nonprofit corporation,
1 17 association, or other group, however organized and conducting
1 18 business in this state, including a financial institution as
1 19 defined in section 527.2, and a business organized for the
1 20 purpose of destroying records.
1 21 d. "Personal information" means an individual's first name
1 22 or first initial in combination with the individual's last
1 23 name together with any other identification information
1 24 defined in section 715A.8 when neither the name nor other
1 25 identification information is encrypted. The attorney general
1 26 may provide by rule for additional items of identification
1 27 information. "Personal information" does not include
1 28 information that is available to the public from federal,
1 29 state, or local government records, or information that an
1 30 individual consents to have publicly listed or disseminated,
1 31 such as name, address, or telephone number.
1 32 e. "Security breach" means an unauthorized computer access
1 33 or acquisition of computer data that compromises the security,
1 34 confidentiality, or integrity of a customer's personal
1 35 information. "Security breach" also means the unauthorized
2 1 disclosure of a customer's personal information subsequent to
2 2 a good faith, authorized computer access or acquisition of
2 3 computer data.
2 4 2. If a person that owns or licenses computer data
2 5 discovers that a security breach has occurred, the person
2 6 shall immediately notify the customer, subsequent to the
2 7 following:
2 8 a. A law enforcement agency has not determined that notice
2 9 will impede or compromise a criminal investigation.
2 10 b. The person has taken the necessary steps to determine
2 11 the scope of the security breach and has determined how to
2 12 restore the security of the computer data.
2 13 3. A person who maintains computer data containing
2 14 personal information that the person does not own or license
2 15 shall upon discovery of a security breach immediately notify

the owner or licensee that a security breach has occurred.

4. Notice under subsections 2 and 3 may be provided by one of the following methods:

- a. Written notice.
- b. Electronic notice.
- c. If the cost of providing notice exceeds two hundred fifty thousand dollars or the number of customers exceeds five hundred thousand, or if insufficient customer contact information exists, the person may provide notice as follows:
 - (1) By electronically mailing notice to customers with electronic mail addresses.
 - (2) By conspicuously posting a notice on the person's website, if the person maintains one.
 - (3) By publishing notice in major statewide media.

5. The notice under subsections 2 and 3 shall include all of the following:

- a. To the extent possible, a description of the personal information reasonably believed to have been accessed, acquired or disclosed.
- b. A toll-free telephone number that the customer may use to contact the person or the person's agent for the following information:
 - (1) The type of personal information maintained about the customer or about customers in general.
 - (2) Whether the person maintained information about the customer.
 - (3) The toll-free telephone number and address for each of the three largest consumer credit reporting agencies as defined in section 714F.1.

6. A waiver by a customer of the provisions of this section is contrary to public policy, and is void and unenforceable.

7. A person who violates this section violates section 714.16, subsection 2, paragraph "a". All powers conferred upon the attorney general to accomplish the objectives and carry out the duties prescribed in section 714.16 are also conferred upon the attorney general to enforce this section, including but not limited to the power to issue subpoenas, adopt rules, and seek injunctive relief and a monetary award for civil penalties, attorney fees, and costs. Additionally, the attorney general may seek and recover the greater of five hundred dollars or actual damages for each customer injured by a violation of this section.

DIVISION II

Sec. 2. NEW SECTION. 714F.1 DEFINITIONS.

For the purposes of this chapter, unless the context otherwise requires:

1. "Consumer" means an individual.
2. "Consumer report" means any information relating to the creditworthiness of a consumer.
3. "Consumer reporting agency" means any person or entity engaged in the practice of assembling or evaluating consumer credit information for the purpose of furnishing a consumer report to a third party. A consumer reporting agency shall not include any of the following:
 - a. A check service or fraud prevention service company that reports on incidents of fraud or issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payment.
 - b. A deposit account information service company that issues reports regarding account closures due to fraud, overdrafts, automated teller machine abuse, or similar negative information regarding a consumer to inquiring financial institutions for use only in reviewing the consumer's request for a deposit account at the inquiring financial institution.
 - c. Any person or entity engaged in the practice of assembling and merging information contained in a database of one or more consumer reporting agencies and does not maintain a permanent database of credit information from which new consumer reports are produced.
4. "Identification information" means as defined in section 715A.8.
5. "Identity theft" means as used in section 715A.8.
6. "Proper identification" means sufficient identification information to ascertain that individual's identity.
7. "Security freeze" means a hold placed on a consumer report that prevents a consumer reporting agency from releasing a consumer report without first obtaining the consumer's express authorization.

4 27 Sec. 3. NEW SECTION. 714F.2 SECURITY FREEZE.

4 28 A consumer may submit by certified mail to a consumer
4 29 reporting agency a written request for a security freeze. The
4 30 consumer must submit proper identification with the request.
4 31 Within five business days after receiving the request, the
4 32 consumer reporting agency shall commence the security freeze.
4 33 Within ten business days after commencing the security freeze,
4 34 the consumer reporting agency shall send a written
4 35 confirmation to the consumer of the security freeze, a
5 1 personal identification number or password, other than the
5 2 consumer's social security number, for the consumer to use in
5 3 authorizing the suspension or removal of the security freeze,
5 4 including information on how the security freeze may be
5 5 temporarily suspended.

5 6 Sec. 4. NEW SECTION. 714F.3 TEMPORARY SUSPENSION.

5 7 A consumer may request that a security freeze be
5 8 temporarily suspended to allow the consumer reporting agency
5 9 to release the consumer report for a specific time period or
5 10 to a specific third party. The consumer reporting agency may
5 11 develop procedures to expedite the receipt and processing of
5 12 requests which may involve the use of telephones, facsimile
5 13 transmissions, the internet, or other electronic media. The
5 14 consumer reporting agency shall comply with the request within
5 15 three business days after receiving the request. The
5 16 consumer's request shall include all of the following:

- 5 17 1. Proper identification.
- 5 18 2. The personal identification number or password provided
5 19 by the consumer reporting agency.
- 5 20 3. Explicit instructions of the specific time period or
5 21 specific third party designated for suspension of the security
5 22 freeze.

5 23 Sec. 5. NEW SECTION. 714F.4 REMOVAL.

5 24 A security freeze remains in effect until the consumer
5 25 requests that the security freeze be removed. A consumer
5 26 reporting agency shall remove a security freeze within three
5 27 business days after receiving a request for removal that
5 28 includes proper identification of the consumer and the
5 29 personal identification number or password provided by the
5 30 consumer reporting agency.

5 31 Sec. 6. NEW SECTION. 714F.5 FEES.

5 32 1. A consumer reporting agency shall not charge any fee to
5 33 a consumer who is the victim of identity theft for
5 34 effectuating a security freeze, temporary suspension, or
5 35 removal if with the initial security freeze request, the
6 1 consumer submits a valid copy of the police report,
6 2 investigative report, or complaint filed with a law
6 3 enforcement agency concerning the unlawful use of
6 4 identification information by another person.

6 5 2. A consumer reporting agency may charge a fee not to
6 6 exceed ten dollars to a consumer who is not the victim of
6 7 identity theft for each security freeze, removal, or for
6 8 reissuing a personal identification number or password if the
6 9 consumer fails to retain the original number. The consumer
6 10 reporting agency may charge a fee not to exceed twelve dollars
6 11 for each temporary suspension of a security freeze.

6 12 Sec. 7. NEW SECTION. 714F.6 THIRD PARTIES.

6 13 If a third party requests a consumer report that is subject
6 14 to a security freeze, the consumer reporting agency may advise
6 15 the third party that a security freeze is in effect. If the
6 16 consumer does not expressly authorize the third party to have
6 17 access to the consumer report through a temporary suspension
6 18 of the security freeze, the third party shall not be given
6 19 access to the consumer report but may treat a credit
6 20 application as incomplete.

6 21 Sec. 8. NEW SECTION. 714F.7 MISREPRESENTATION OF FACT.

6 22 A consumer reporting agency may suspend or remove a
6 23 security freeze upon a material misrepresentation of fact by
6 24 the consumer. However, the consumer reporting agency shall
6 25 notify the consumer in writing prior to suspending or removing
6 26 the security freeze.

6 27 Sec. 9. NEW SECTION. 714F.8 EXCEPTIONS.

6 28 A security freeze shall not apply to the following persons
6 29 or entities:

- 6 30 1. A person or person's subsidiary, affiliate, agent, or
6 31 assignee with which the consumer has or prior to assignment
6 32 had an account, contract, or debtor-creditor relationship for
6 33 the purposes of reviewing the account or collecting the
6 34 financial obligation owing for the account, contract, or debt,
6 35 or extending credit to a consumer with a prior or existing
7 1 account, contract, or debtor-creditor relationship.
7 2 "Reviewing the account" includes activities related to account

7 3 maintenance, monitoring, credit line increases, and account
7 4 upgrades and enhancements.
7 5 2. A subsidiary, affiliate, agent, assignee, or
7 6 prospective assignee of a person to whom access has been
7 7 granted under a temporary suspension for purposes of
7 8 facilitating the extension of credit or another permissible
7 9 use.
7 10 3. A person acting pursuant to a court order, warrant, or
7 11 subpoena.
7 12 4. Child support enforcement officials when investigating
7 13 a child support case pursuant to Title IV-D or Title XIX of
7 14 the federal Social Security Act.
7 15 5. The department of human services or its agents or
7 16 assignees acting to investigate fraud under the Medicaid
7 17 assistance program.
7 18 6. The department of revenue or local taxing authorities;
7 19 or any of their agents or assignees, acting to investigate or
7 20 collect delinquent taxes or assessments, including interest
7 21 and penalties and unpaid court orders, or to fulfill any of
7 22 their other statutory or other responsibilities.
7 23 7. A person's use of credit information for prescreening
7 24 as provided by the federal Fair Credit Reporting Act.
7 25 8. A person for the sole purpose of providing a credit
7 26 file monitoring subscription service to which the consumer has
7 27 subscribed.

7 28 9. A consumer reporting agency for the sole purpose of
7 29 providing a consumer with a copy of the consumer's consumer
7 30 report upon the consumer's request.

7 31 Sec. 10. NEW SECTION. 714F.9 WRITTEN CONFIRMATION.

7 32 After a security freeze is in effect, a consumer reporting
7 33 agency may post a name, date of birth, social security number,
7 34 or address change in a consumer report provided that written
7 35 confirmation is sent to the consumer within thirty days of
8 1 posting the change. For an address change, written
8 2 confirmation shall be sent to both the new and former
8 3 addresses. Written confirmation is not required to correct
8 4 spelling and typographical errors.

8 5 Sec. 11. NEW SECTION. 714F.10 APPLICATION.

8 6 An entity listed in section 714F.1, subsection 2, paragraph
8 7 "a", "b", or "c", shall be subject to a security freeze
8 8 commenced by a consumer reporting agency that obtains
8 9 information from such entity.

8 10 Sec. 12. NEW SECTION. 714F.11 WAIVER VOID.

8 11 A waiver by a consumer of the provisions of this chapter is
8 12 contrary to public policy, and is void and unenforceable.

8 13 Sec. 13. NEW SECTION. 714F.12 ENFORCEMENT.

8 14 A person who violates this chapter violates section 714.16,
8 15 subsection 2, paragraph "a". All powers conferred upon the
8 16 attorney general to accomplish the objectives and carry out
8 17 the duties prescribed in section 714.16 are also conferred
8 18 upon the attorney general to enforce this chapter, including
8 19 but not limited to the power to issue subpoenas, adopt rules,
8 20 and seek injunctive relief and a monetary award for civil
8 21 penalties, attorney fees, and costs. Additionally, the
8 22 attorney general may seek and recover the greater of five
8 23 hundred dollars or actual damages for each customer injured by
8 24 a violation of this chapter.

8 25 EXPLANATION

8 26 This bill concerns the protection of a person's identity.
8 27 The bill is composed of two parts.

8 28 The first part requires that a person, e.g., a business,
8 29 notify a customer when personal information identifying the
8 30 customer is compromised by a security breach in the computer
8 31 data owned or licensed by the business.

8 32 A customer's personal information is limited by definition
8 33 to a customer's name or other identification information such
8 34 as the customer's address, date of birth, telephone number,
8 35 social security number, and other identifying numbers when
9 1 neither the name nor other identification information is
9 2 encrypted. Information that is available to the public, i.e.,
9 3 by government records or by consent, is not "personal
9 4 information". Notice must be given immediately following a
9 5 security breach, provided that notice will not impede a law
9 6 enforcement investigation and provided that the scope of the
9 7 breach and the remedy therefore have been determined. The
9 8 notice must include a description of the type of personal
9 9 information that may have been acquired and a toll-free
9 10 telephone number for the customer inquiries.

9 11 The second part of the bill creates a new Code chapter that
9 12 allows an individual, the consumer, to place a hold on the
9 13 individual's consumer report to prevent a consumer reporting

9 14 agency from releasing any information relating to the
9 15 individual's creditworthiness without first obtaining the
9 16 individual's express authorization. This "security freeze"
9 17 may be temporarily suspended to allow a consumer reporting
9 18 agency to release a consumer report for a specific time period
9 19 or to a specific third party. A security freeze remains in
9 20 effect until the individual requests its removal.
9 21 The bill provides that a consumer reporting agency cannot
9 22 charge any fees to an individual who is the victim of identify
9 23 theft. Other individuals pay a fee up to \$10 per security
9 24 freeze, removal, or for reissuing a necessary password if the
9 25 individual fails to retain it, and up to \$12 per temporary
9 26 suspension request.
9 27 The bill addresses third parties that seek a consumer
9 28 report, misrepresentation of a material fact by an individual,
9 29 and lists exceptions to the security freeze, including a
9 30 person with a prior debtor-creditor relationship. The bill
9 31 provides for changes in the consumer report and makes certain
9 32 entities also subject to a security freeze.
9 33 Both parts of the bill provide that a waiver of the
9 34 protections offered by the security breach notification and
9 35 the security freeze provisions is void and unenforceable.
10 1 Both parts of the bill contain enforcement provisions. A
10 2 violation is an offense under Code section 714.16 and is
10 3 subject to enforcement, including injunctive relief and money
10 4 damages, by the attorney general.
10 5 LSB 5469DP 81
10 6 eg:rj/gg/14